

**Town of Milford  
Zoning Board of Adjustment Minutes  
April 16, 2014  
Good Mojo Dog Center, Inc.  
Case #2015-04  
Variance**

Present: Fletcher Seagroves, Vice Chair  
Mike Thornton  
Len Harten  
Joan Dargie

Katherine Bauer – Board of Selectmen’s representative

Excused: Zach Tripp, Chair

Secretary: Peg Ouellette

The applicant, Good Mojo Dog Center, LLC, prospective owner of Map 15, Lot 16, located at 394 Elm Street, in the Industrial District, is requesting a Variance from Article V, Section 5.06.1, to allow a retail business as defined in Article IV for a dog training and boarding center.

**Minutes Approved on May 7, 2015**

Fletcher Seagroves, acting as Chairman, read the notice of hearing into the record, informed all of the procedures and read the list of abutters. Deniece Johnson, applicant, and Stuart Johnson were present. Representatives of Goldenroz Corp, 463 NH RTE. 13S, Milford, were present. Attorney Dwight Sowerby was present representing the applicant. F. Seagroves invited the applicant and attorney forward to present her case. He informed the applicant and attorney since there were only four board members present they could elect to proceed or table the case. If they proceed, they must sign a waiver stating they would not appeal on the basis of a less than five-member board. They elected to proceed.

D. Sowerby stated the property at 394 Elm St. is under agreement. The actual owner is Goldenroz, who has given permission for applicants to be there. The property is a relatively small lot, 2 acres, in the Industrial Zone, with an old 1800’s brick residence. His clients own and operate Good Mojo Dog Center on Emerson Rd. As full disclosure, he is also a client of theirs for his dog. The concept is cage-free boarding. Dogs are loose and have individual beds. They do grooming and

training and host rescue groups. Their current lease is running out and they need to find a new property. With this particular property they feel they can do something with the existing building and at some time maybe add to the back. Proposal is to provide same services as currently. The zone is currently in the Industrial zone where Retail is not specifically permitted. With having said that, industrial part of that Granite Concrete is on one side, the abutter to the east is Shep Brown's Boat Basin which is retail and across the street in a different zone is Gurney's automotive. There is a lot of retail in the neighborhood. They meet the five criteria. This case is one that the concept of a variance was designed for. The ordinance as a whole is fine – lawful and fair. Applying that to this property because of its size and because it was a former residence, results in it being unfair. Statute has always allowed variance as a safety valve when the application of the ordinance to that property, because of unique characteristics, is unfair. That is why the applicant is here this evening.

F. Seagroves asked for questions from the Board. There were none. He asked about the business's hours.

D. Johnson said they would maintain current hours: M-F 6:30 a.m. to 7 p.m.; Sat. 9 a.m. to 5 p.m.; Sun. 9 a.m. to 1 p.m. They have a staff member 24 hours a day to stay with dogs overnight.

F. Seagroves said there would probably be dogs there at night? What hours would people normally pick up dogs?

D. Johnson said yes, and any of those hours.

F. Seagroves asked about fencing.

D. Johnson said currently they have a 6-ft chain link fence with additional one-foot jump guard – not sensing – it is special dog-safe material. They are getting estimates on chain link with commercial vinyl or wood and would do either 6 ft with a jump guard or a 7 ft.

F. Seagroves asked about underneath.

D. Johnson said they bury the bottom of the fence, and dogs are not out alone.

F. Seagroves commented for the benefit of the public these are questions he has heard in other cases and thought he would bring them out.

L. Harten asked if the dogs are comingled.

D. Johnson said pretty much, the cage free philosophy. The business limits to only dog-friendly dogs. They all have to pass a temperament test, must be neutered and spayed.

D. Sowerby said when you first go there; first question asked is they will have to see the dog's temperament. When you see how it is done, you can understand you can't have unfriendly or aggressive animals.

L. Harten asked if there was fence to the rear of the existing structure.

D. Johnson said yes. They mapped it out on the plan.

F. Seagroves and L. Harten asked about dogs getting loose when being picked up and whether they would be leashed before they left.

D. Johnson said they would be leashed before they got to the lobby, before they get access to the door.

M. Thornton said there is a double door.

D. Johnson agreed.

M. Thornton said there is going to be a flow of traffic in and out of Rt. 101 access. How many cars a day do you foresee?

D. Johnson said it would be varied pick up and drop off. Currently, about 15 parking spaces and they are never full with staff and customers. Drop off and pick up from 6:30 a.m. to 11 a.m. On average they get sixty dogs a day but never more than about three at once.

L. Harten asked if parking was an issue.

D. Johnson said it wasn't.

F. Seagroves commented it is a busy road during morning commuting hours.

D. Johnson responded so is Emerson Road.

F. Seagroves asked for further questions. There were none. He opened the meeting for public comment.

Representative from Goldenroz commented that getting in and out has been much safer and easier since Talarico left. Talarico used to park cars in their entrance but Gurney's doesn't, so getting in and out is much simpler.

L. Harten asked if his comment meant he didn't believe this dog center would create any traffic issues.

The representative replied yes.

There were no further questions from the public.

F. Seagroves closed the public portion of the meeting and asked the applicant to read the application into the record, going through the criteria for a variance.

**1. Granting the variance would not be contrary to the public interest because:**

The New Hampshire Supreme Court has ruled that to be contrary to the public interest, the proposed variance must "*unduly and in a marked degree*" conflict with the ordinance such that it would violate the basic zoning objectives by "*...altering the essential character of the neighborhood or threaten the public health and safety of the public.*" Chester Rod and Gun Club, Inc. v. Town of Chester, 152 N.H. 577 [2005]

**a. The Essential Character.** In this case, the proposed use is less intensive than many Acceptable Uses – manufacturing and warehousing, for example – and in no way would a dog training and boarding center "*alter the essential character of the neighborhood.*" The abutters include Granite Concrete to the West, Gurney's Automotive Repair across the street, and Shep Browns Boat Basin to the East. Also in the neighborhood are Hayward's Ice Cream, Medlyn Motors and Milford Auto outlet. Clearly, a retail pet business would not alter the essential characteristics of this neighborhood.

**B. Public Health and Safety.** The proposed use is simply a retail dog boarding, training and pet food sales center. In no way will it negatively impact the public health and safety and, in fact, it will be much less intensive than either the Acceptable uses in the Ordinance or even many of the current uses in the neighborhood.

**2. If the Variance were granted, the spirit of the ordinance would be observed because:**

The Ordinance has a "Purpose" section, Article I. In that section, the purpose is stated as, among other things: "*for the purpose of promoting the public health, safety, morals, general welfare and civil rights of the inhabitants of the Town of Milford...*"

a. The subject property has not been fully utilized for several years and this use will keep that property useful and on the tax rolls.

b. Because of the minimal, if any, impact on any other property, it will not impair any property values.

c. Because of the location of this will be a de minimis impact on any other property or the neighborhood.

d. It will "protect the use and enjoyment" of the applicants' property.

**3. Granting the variance would do substantial justice because:**

"*Perhaps the only guiding rule on this factor is that any loss to the individual that is not outweighed by a gain to the general public is an injustice.*" Malachy Glen Assocs. v. Town of Chichester, 155 N.H. 102, 109, 920, A.2d 1192 (2007) Granting this variance will substantially benefit the applicants while not harming the greater community or general population while a denial will harm the applicant and provide no benefit to the general

public – the very definition of “substantial justice.” Granting this variance is “the right thing to do.”

**4. The proposed use would not diminish surrounding property values:**

No other property will be impacted negatively by the granting of this variance. If there is any impact to the value of surrounding properties, it should be positive. As stated, this property has not been fully utilized for some time. A vibrant and engaged business neighbor cannot help but increase the vitality of the neighborhood and thus the value of the other businesses.

**5. Denial of the variance would result in unnecessary hardship.**

**A). “Unnecessary hardship means that, owing to special conditions of the property that distinguish it from other properties in the area:**

This property has been vacant for some time. It is a former single family residence which has been mostly used as an office building. The Industrial zone and the neighborhood are not exactly conducive to the use as an office building and it is very unlikely that the building could be converted to any of the other Acceptable Uses. There are no similar buildings in the Industrial District and therefore this building is unique. [He added this was very small lot, one of the smallest, if not the smallest, in this Industrial Zone.]

**i). No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:**

Granting this variance will have no deleterious effect on any other property nor would it in any way limit or violate any of the purposes listed in Article I of this ordinance. Granting this variance provides great relief to the applicants but in no way affects the community as a whole or any other property owner or person. Granting this variance will put new life into this property.

**ii) and; The proposed use is a reasonable one because:**

The applicants are asking to use the subject property for a use less intensive than the Acceptable Uses and less intensive than uses of other properties in the neighborhood. Granting the variance is also reasonable in that there is no deleterious effect on any other person, place or thing and will provide new life to the site and to the neighborhood.

**B) If the criteria in Section (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance. A variance is therefore necessary to enable a reasonable use of the property because:**

N/A

D. Sowerby said they believe this meets the criteria, is a reasonable proposal and will bring new life to the property. He also stated that for the record, the board would accept a document that he filed with a rebuttal.

F. Seagroves said they had received one correspondence from Suzanne Fournier of 9 Woodward Drive. He did not read it all, but said it was her interpretation of the variance and how a variance should be done. There is a rebuttal from the applicant which will also go into the record. All members of the board had read Ms. Fournier’s correspondence. F. Seagroves read the intent of the Industrial District: “to provide areas for manufacturing, processing, assembly, wholesaling, research and development.” The applicants are going for retail.

He asked if the board had any additional comments or questions; they did not, so they proceeded to discuss the criteria for a variance.

**1. Would granting the variance not be contrary to the public interest?**

M. Thornton – yes. No problem arising from granting variance. No adverse effect to the public. Service they offer is required in the neighborhood because of the business they do at their current location. Public will suffer a disservice by denying.

J. Dargie – It would not be contrary to the public interest. The area is full of retail businesses. Many reasons why it is fine in that location.

L. Harten agreed. If variance were granted it would not be contrary to the public interest. Reading through the acceptable uses which attorney referred to, it is small lot. First acceptable use is harvesting of natural resources which would not work. Processing of natural resources does not fit the neighborhood. He could pick out several acceptable uses in Industrial district that would not fit on this lot. Also, businesses around them are virtually retail- ice cream stand and auto repair.

F. Seagroves doesn't have a problem. As mentioned, there are other industrial around; they have to remember some of them were there before zoning. That doesn't make it right. They are talking about manufacturing and retail. He doesn't see harm in putting in retail.

**2. Could the variance be granted without violating the spirit of the ordinance?**

J. Dargie – yes. Part of that is a farm roadside stand which would probably produce more traffic.

L. Harten – agreed. Granting would not injure spirit of the ordinance. The ordinance speaks to the promotion of health, safety, morals, general welfare. Having a retail business in this lot would not create any problem in that area.

M. Thornton –agreed it could be granted without injury to the spirit because while there is nothing quite like what they do that would have required an acceptable use inclusion, there is nothing to indicate exclusion.

F. Seagroves – per Handbook and health, safety and general welfare, he didn't see any problem. Health, safety, - an industry may have more traffic. General welfare – He had asked about how secure the dogs would be and doesn't see problems.

**3. Would granting the variance do substantial justice?**

L. Harten – it would. Going to the Handbook, loss to the individual in this case would far outweigh justice to the general public.

M. Thornton – doesn't see any justice that would be achieved by denying.

J. Dargie – agreed. It would do substantial justice. Lot is small to begin with to be considered for manufacturing. Building is small. Property has been on the market for a long time so whoever was going to purchase it would probably come to the Board for a variance. It is better getting it into use.

F. Seagroves agreed. Any loss to the individual is not outweighed by gain to the public by denying.

**4. Could the variance be granted without diminishing the value of abutting property?**

M. Thornton – it would improve value by increasing traffic flow in a slow enough traffic pattern for them to see what establishments are there instead of dashing past. His answer is yes.

J. Dargie agrees. They can grant without diminishing value of abutting property. Good Mojo where it is looks great. This will probably look like that once they get in to fix it up.

L. Harten – no diminution of abutting property values. Would probably further the increase in value of abutting properties because as it stands now it is certainly not living up to its potential. Doesn't believe there will be any diminishment of abutting property values when you have property to the west in the gravel, stone, concrete business and auto repair shop across the street, and boat sales and storage area to the east.

F. Seagroves agrees. Didn't see it would diminish value of abutting property.

**5. Would denial of the variance result in unnecessary hardship taking the following into consideration:**

**A) i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property;**  
**ii. The proposed use is a reasonable one.**

**B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.**

M. Thornton – yes. There is no fair and substantial relationship in any way between them going in with a dog catering business and what the general public would run into. It would create hardship not to have their service in the area.

J. Dargie agrees. Denying would result in unnecessary hardship. Fair and substantial relationship – the ordinance made it industrial to keep traffic down in that area.

Many more things, even light manufacturing, would create more traffic than this.

L. Harten agrees. Believes denial would result in unnecessary hardship to applicant. No fair and substantial relationship. Are they discussing proposed use is reasonable one?

F. Seagroves said to talk about that, as well.

L. Harten said proposed use is reasonable for the area, size of the lot.

F. Seagroves – Re A, this is zoned industrial and as he stated, the intent of the industrial area is manufacturing, processing, assembly, etc. He doesn't see any reason they can't grant variance for retail. There is a lot of retail in the area, although some probably there before zoning. A couple of them were thereafter. Denying would be unnecessary hardship.

F. Seagroves asked if there were any additional comments; there were none so he called for a vote.

**1. Would granting the variance not be contrary to the public interest?**

M. Thornton – yes; L. Harten – yes; J. Dargie – yes; F. Seagroves - yes

**2. Could the variance be granted without violating the spirit of the ordinance?**

L. Harten – yes; J. Dargie – yes; M. Thornton – yes; F. Seagroves - yes

**3. Would granting the variance do substantial justice?**

J. Dargie – yes; M. Thornton – yes; L. Harten – yes; F. Seagroves - yes

**4. Could the variance be granted without diminishing the value of abutting property?**

M. Thornton – yes; J. Dargie – yes; L. Harten – yes; F. Seagroves - yes

**5. Would denial of the variance result in unnecessary hardship taking the following into consideration:**

**A) i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property;**  
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L. Harten – yes; J. Dargie – yes; M. Thornton – yes; F. Seagroves - yes

F. Seagroves asked if there was a motion to approve Case #2015-04, a request for a variance.

M. Thornton made the motion to approve Case #2015-04.

J. Dargie seconded the motion.

**Final Vote**

M. Thornton –yes; L. Harten – yes; J. Dargie – yes; F. Seagroves - yes  
Case #2015-04 was unanimously approved.  
F. Seagroves reminded the applicant of the thirty (30) day appeal period and that they should contact the office as to when they can go forward.